Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.	)	
Southwestern Bell Telephone Company,	)	CC Docket No. 97-121
and Southwestern Bell Communications	)	
Services, Inc. d/b/a Southwestern Bell	)	
Long Distance for Provision of In-Region	)	
InterLATA Services in Oklahoma	)	

REPLY OF THE ASSOCIATION
FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS")[1] hereby replies to the evaluation and addendum of the Department of Justice filed May 16 and May 21, 1997, concerning the application of Southwestern Bell ("SBC") for in-region long distance authority in Oklahoma. This reply is limited to two issues raised by DOJ: (1) the Department's view of SBC's reliance on "Most Favored Nations" ("MFN") clauses in order to show compliance with the competitive checklist through multiple approved interconnection agreements; and (2) the Department's conclusion that the "predominantly facilities based" requirement of Track A can be met for residential customers through resale.

I. SBC SHOULD NOT BE ALLOWED TO USE CONTRACTUAL MFN CLAUSES IN ORDER TO MIX AND MATCH MULTIPLE INTERCONNECTION AGREEMENTS FOR CHECKLIST COMPLIANCE.

DOJ states in its May 16th evaluation of SBC's application that checklist compliance can be met through

[1] ALTS is the national trade association for more than thirty facilities-based local exchange competitors.

multiple approved agreements provided there is a mechanism, such as a "most favored nations" clause, which "readily allows provisions of other approved interconnection agreements to be imported into agreements with qualifying Track A competitors" (DOJ Evaluation at 22).

ALTS agrees with the Department that there is no need to require checklist compliance through a single new entrant so long as there is a robust mechanism which provides current or future entrants access to each item on the same terms.[2] One way to accomplish this would be for SBC to agree to adhere voluntarily to the Commission's regulations implementing Section 252(i) of the 1996 Act. The Commission's Section 252(i) regulations guarantee that any carrier can order any particular items from state approved interconnection agreements, including checklist items, on the same terms and conditions.

Absent SBC's agreement to be bound by the Commission's Section 252(i) regulations, SBC could devise unique interconnection agreements that lack any practical usefulness, because of their packaging, to any competitor except the signatory. SBC could then use such agreements to show checklist compliance under a "mix-and-match" approach, even though other competitors would lack effective access to

[2] See ALTS's position paper "Section 271: Creating Sustainable Local Competition Before the RBOCs Enter Long Distance" at 14-16.

the particular checklist items involved.

Most MFN clauses would not provide the same protections as the Commission's Section 252(i) rules. An MFN clause typically only permits the signatories to request terms from other agreements. Such a provision might not be adequate to fully protect other interconnectors. For example, such clauses might permit exceptions based on term and volume conditions even if such conditions did not reflect differences in underlying costs. Compare 47 C.F.R. § 51.809(b)(1). Furthermore, even if SBC were to include satisfactory MFN clauses in its existing agreements, there would be no assurance that it would include the same provisions in the agreements of future new entrants. In the absence of SBC's voluntary compliance with Rule 51.809, or the eventual vindication of the FCC's Section 252(i) rules, "mix-and-match" compliance with Section 271 under simple MFN clauses creates an intolerable opportunity for market cartelization.

II. BUSINESS AND RESIDENTIAL CUSTOMERS ARE ENTITLED TO THE SAME PRO-COMPETITIVE INCENTIVES UNDER TRACK A, INCLUDING THE "PREDOMINANTLY FACILITIES BASED" ENTITY REQUIREMENT.

In an "Addendum" to its evaluation filed May 21st, the Department concludes that: "Section 271(c)(1)(A) does not require that both residential and business customers be served over the facilities-based competitors' own facilities" (Addendum at 2). In support of this view, the Department argues first that the

statute need not be read to demand that each class of customers be served by a predominantly based provider, only that such a provider exist, and that it serve both classes of customers (id. at 3). Second, the Department argues as a policy matter that once:

> "(1) the facilities-based path is being used wherever requested, (2) and at least one facilities-based competitor is offering service to residential, as well as business, subscribers ... there is no reason to delay BOC entry into interLATA markets simply because competitors that have a demonstrated ability to operate as facilities-based competitors, and that are in fact providing service predominantly over their own facilities, find it most advantageous to serve one class of customers on a resale basis" (id. at 4).

With due respect to the Department, it is clear Congress placed residential customers on an equal footing with business customers in Track A, and made the determination that RBOC in-region entry should await the RBOCs' compliance with Track A as to both categories of customers.

Beyond the plain statutory error in relegating residential customers to second class status under Track A, the Department is also mistaken in concluding that entry into business markets on a facilities basis somehow demonstrates a new entrant's ability to enter residential markets in the same fashion. Based on this erroneous conclusion, the Department concludes that a choice by a facilities-based new entrant to serve residential customers through resale is simply a decision "most advantageous" to itself, and therefore should not affect Track A approval.

The legislative history of Section 271 amply demonstrates the Department's error. The Conference Committee Report expressly refers to cable providers as a paradigm of potential facilities-based competitors (H.R. REP. No. 104-458 at 148). Cable companies serve residential customers, not businesses. The Conference Committee's reliance on the fact that "95 percent of United State homes" have cable available to them would have been pointless if the Committee were actually content to have the "facilities-based" requirement discharged through only resale (id.).

Furthermore, the Department's silent assumption that provision of facilities-based competitive service to business markets adequately demonstrates an ability to serve residential markets the same way -- thus suggesting that a decision to employ resale in residential markets is simply a "most advantageous" choice by the competitor -- is completely unsupported by the present record, and inconsistent with the Department's statements elsewhere. In the present proceeding, Brooks Fiber has made it clear it has not decided yet to enter residential markets using resale even on an "ancillary" basis. Affidavit of John Shapleigh at ¶ 7.

Elsewhere the Department has estimated that residential customers "would derive substantial benefits -- possibly more than $12 billion annually -- from the development of competitive markets in which prices reflect economic costs" (DOJ Reply

Comments in CC Docket No. 96-98, filed May 30, 1996, at 31). The Department's reliance on a potential benefit of more than $12B annually to residential customers as a result of economically-based local residential service would be seriously undercut, or at least seriously delayed, if RBOC in-region entry could be predicated on the provisioning of only resold competitive services to residential customers, and not insisting upon facilities-based provisioning.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission enter an order dismissing SBC's Section 271 application for Oklahoma.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply of the Association for Local Telecommunications Services was served May 27, 1997, on the following persons by first-class mail or hand service as indicted.

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